

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

PENCADER ASSOCIATES, LLC.)	
)	
Plaintiff,)	
)	Civil Action No. 08C-02-162 WCC
v.)	
)	
SYNERGY DIRECT MORTGAGE INC.)	
)	
Defendant.)	

Submitted: July 8, 2010
Decided: August 3, 2010

Upon Defendant's Motion for Reargument/Reconsideration - DENIED.

ORDER

Steven F. Mones, Esquire; The Freibott Law Firm, P.A., 1711 East Newport Pike, P.O. Box 6168, Wilmington, DE 19804. Clark C. Kingery, Esquire; Clark C. Kingery, P.A., 203 West 18th Street, Wilmington, DE 19802. Counsel for Plaintiff.

Charles Gruver, III, Esquire; Charles Gruver, III, P.A., 724 Yorklyn Road, Suite 315, Hockessin, DE 19707. Counsel for Defendant.

CARPENTER, J.

Upon consideration of the Defendant Synergy Direct Mortgage, Inc.'s

(“Defendant” or “Synergy”) Motion for Reargument/Reconsideration, the Plaintiff Pencader Associates, L.L.C.’s (“Plaintiff” or “Pencader”) Response in Opposition to the Motion, and the record of this case, it appears to the Court that:

1. Defendant has moved for reargument/reconsideration of this Court’s Findings of Fact and Conclusions of Law Bench Trial decision issued on June 30, 2010. A bench trial between the parties was held on March 8 and 9, 2010 addressing (a) whether a contract or contracts existed between the parties; (b) whether the contract(s) were breached; (c) whether damages are appropriate; and (d) in the alternative if no contract found, whether damages are recoverable under quantum meruit. Based upon the evidence presented at trial, the Court concluded that (a) contracts for appraisal services existed between Pencader and Synergy; (b) Synergy did not breach those contracts which could not be reproduced for the record, those contracts that were marked “COD” or had no designations; (c) Synergy did breach the contracts that were marked “Bill to Synergy” excluding those contracts that proceeded to closing and where evidence was presented that Pencader was listed on the HUD closing statement; (d) damages are due to Pencader in the amount of \$33,300.00 for the appraisal services performed by Pencader; and (e) Pencader’s quantum meruit claim was dismissed.

2. Defendant’s Motion requests that the Court reconsider the evidence

presented at trial regarding the terms of the contract and expectations of both parties when forming a contractual relationship through Pencader’s appraiser, Nina Lizama.¹ Defendant contends the Court gave insufficient consideration “to the expectation and understanding of the parties when forming their relationship” and they assert that Plaintiff understood “Bill to Synergy” to mean that the appraisal fee would only be paid through the settlement process when the borrower went to closing.² Therefore Defendant argues that it is not liable for those appraisals that were marked “Bill to Synergy” that did not proceed to closing. The Defendant submits that the Court should modify its decision and reduce the judgment against the Defendant to the sum of \$15,900.³

3. A motion for reargument will usually be denied unless the court has “overlooked a controlling precedent or legal principles, or the court has misapprehended the law or facts such as would have changed the outcome of the underlying decision.”⁴ A motion for reargument should not be used merely to rehash the arguments already decided by the Court, nor will the Court consider new arguments that the movant could have previously raised.⁵ The movant “has the

¹ Def.’s Mot. for Reargument/Reconsideration ¶¶ 2-3.

² *Id.*

³ *Id.* at ¶ 7.

⁴ *Defillipo v. Quarles*, 2010 WL 2636855, at *2 (Del. Super. June 30, 2010) (citing *Lamourine v. Mazda Motor of Am.*, 2007 WL 3379048, at *1 (Del. Super. Sept. 24, 2007)).

⁵ *Brenner v. Village Green, Inc.*, 2000 WL 972649, at *1 (Del. Super. May 23, 2000).

burden of demonstrating newly discovered evidence, a change in the law, or manifest injustice.”⁶

4. After reviewing the moving and responding papers, the trial transcript, and the prior decision by this Court, Defendant’s Motion for Reargument/Reconsideration will be denied. Defendant’s Motion is no more than an iteration of arguments presented at trial and it has not met its burden providing a showing of newly discovered evidence, a change in law, or manifest injustice. There is no dispute that when a mortgage request in which an appraisal was performed by the Plaintiff went to settlement and the appraisal request form indicated “Bill to Synergy,” the expectation was that the settlement attorney would make payment to the Plaintiff. The Court is also willing to accept the premise that the appraisals were performed for the benefit of the mortgage client of Synergy who should be primarily obligated to pay for the appraisal. But when the mortgage process did not proceed to settlement, there is no credible evidence to find either contractually or by customary business practices that the work performed by the Plaintiff would simply go unpaid. It was Synergy who requested the appraisal on behalf of their client and who indicated they should be billed for that service. The fact that on occasion these billings would be paid through the settlement process does not relieve them of their contractual

⁶ *Id.* (citing *E.I. du Pont de Nemours & Co. v. Admiral Ins. Co.*, 711 A.2d 45, 55 (Del. 1995)).

obligation when that did not occur. If Synergy has any recourse here, it is to request their clients who were seeking mortgages to reimburse them for these funds, not to stick the Plaintiff with the bill. If Synergy wanted to relieve themselves of any contractual obligation, they should have documented the terms of their relationship with the Plaintiff or clearly set forth those conditions on their request form. They did neither, and this sloppy business practice has put them in the position of being unable to support their litigation position. Accordingly, the Defendant's Motion for Reargument is hereby DENIED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.